LEGISLATIVE UPDATE

HOUSE COMMITTEE ON THE BUDGET
Majority Caucus

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H.R. 3210 – THE TERRORISM RISK PROTECTION ACT

***Summary*:** H.R. 3210 would provide a kind of Federal financial "backstop" assistance to commercial property and casualty insurers in the event of losses from future terrorist acts. The assistance – all or most of which would be subject to reimbursement, as further discussed below – would be available for future losses occurring from the time of enactment through 1 January 2003; and the Secretary of the Treasury would have authority to extend the assistance an additional 1 year or 2 years. Any budget authority or outlays triggered by the act are designated as an "emergency," which allows for automatic adjustments of the applicable spending limitations as needed (see further discussion below).

Under the bill, the Federal Government would be required to provide financial assistance under two basic conditions: 1) when total commercial property and casualty insurers sustained losses resulting from terrorism in excess of $1 billion; or 2) if insurers' losses exceeded $100 million, with "significant" amounts accruing to an individual insurer. ("Significant" would be determined on the basis of the volume of the insurer's business.) The act allows the Treasury Secretary to recover the cost of any assistance provided through assessments on the commercial insurance industry, and on purchasers of commercial property and casualty insurance.

Generally, the assistance provided by the Government would be 90 percent of the insured losses. (This based on the amount that normally would be covered by "reinsurance" – coverage purchased by insurance companies themselves to protect them in the event of catastrophic losses. It is assumed such reinsurance would not be available in these circumstances). A lesser percentage could be paid in some cases, however, depending on the amount of the affected insurer's losses and its net commercial property and casualty premiums. Total Federal financial assistance would be limited to $100 billion.

The Secretary would be required to recoup from the commercial insurance industry up to $20 billion of Federal assistance provided. Assessments against commercial insurers could not exceed 3 percent of each insurer's net written premiums in any calendar year. Hence, for large amounts of Government-provided assistance, recoupment would occur over a number of years.

If total financial assistance exceeded $20 billion – the maximum that could be recouped from insurers – the Secretary could recover some or all of the additional cost through surcharges assessed against the policyholders of commercial property and casualty insurance.

The bill creates a Federal cause of action as the exclusive remedy for cases arising from terrorist acts that would trigger this Federal assistance. Under this provision, punitive damages are prohibited, other noneconomic damages are limited, and awards are reduced by the amount of Federal aid received by the plaintiffs. The bill also calls for studies concerning tax provisions related to insurance reserves for terrorism, and how terrorism effects the life insurance industry, railroad insurance, and reinsurance.

***Cost of Legislation*:** Because the extent and cost of terrorism in any given year cannot be predicted, the Congressional Budget Office [CBO] developed a cost estimate for the legislation based on the *expected value* of the Government's financial assistance payments. This value can be roughly equated to the premium payment necessary to offset the risk of providing equivalent insurance. On this

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basis, CBO estimates the financial assistance will cost $800 million in fiscal year 2002 and $7.3 billion over the period of 2002 through 2006.

CBO expects that over a period of "many years," the Government's cost would be nearly offset through the recoupment authority provided to the Treasury Secretary. In the short term, CBO estimates that there will be no offsetting revenues in fiscal year 2002, and revenues will be increased by $1.4 billion over the 2002-2006 period. Hence the net cost of the legislation would be $5.9 billion from 2002 through 2006. Funds to conduct the various studies ordered by this legislation would be subject to appropriations.

***Legislation Compared With the Budget Resolution*:** The bill designates the amount of new budget authority and outlays resulting from financial assistance in this legislation as "emergency" spending pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Because of this emergency designation, the assistance does not cause the measure to exceed the appropriate budgetary levels established in section 302(a) of H.Con.Res. 83. It therefore complies with sections 302(f) and 311(a) of the Budget Act, which stipulates that legislation may not exceed the applicable 302(a) allocations or the aggregate levels in the budget resolution.

***Emergency Designation – Compliance with the Budget Act and PAYGO*:** The effect of the "emergency" designation is to increase the 302(a) allocations to the Committee on Financial Services, and the aggregate levels in H.Con.Res. 83, by an equivalent amount. Accordingly, the bill does not violate section 302(f) or section 311 of the Congressional Budget Act and will not be subject to any related points of order.

Because the assessments would not likely be imposed until fiscal year 2003, the bill does violate section 303(a) of the Budget Act, which prohibits the consideration of legislation that first changes revenue in a year for which no budget resolution has been adopted.

In addition, because the benefits conferred on the insurance industry may be construed as an entitlement, section 401 of the Budget Act will also be violated. This section of the Budget Act prohibits the consideration of legislation which would create a new entitlement in the same year in which it is considered.

As an authorization bill, the legislation normally would be subject to the pay-as-you-go [PAYGO] procedures, applying to entitlement and tax legislation, rather than the appropriations caps (except for the studies, which are subject to appropriation). The emergency designation effectively exempts the bill from PAYGO; hence the bill need not be offset by subsequent tax and entitlement legislation and will not trigger a sequestration.

Because of the emergency designation, the bill was referred to the Committee on the Budget as required by section 306 of the Congressional Budget Act. The Committee has allowed itself to be discharged, and there is no violation of section 306 of the Congressional Budget Act.

Summary of H.R. 3210 (2002-2006 budget authority in billions of dollars)	
Financial Assistance to Commercial Casualty and Property Insurers	7.3
Offsetting Revenues from Industry Assessments and Premium Surcharges	1.4
Total	**5.9**

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